

CITY OF OLATHE PRICE AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and Crossland Heavy Contractors, hereinafter "Contractor" (each individually a "Party" and collectively, the "Parties"). City needs on-call construction support, and contracts with Contractor for the work described in Contractor's proposal in **Exhibit A**.

1. FEES, EXPENSES, AND TERM. City agrees to pay Contractor at the prices listed in **Exhibit A** to supply the goods or services described in **Exhibit A**, as needed and as requested by City by written authorization. City will have no financial obligation under this Agreement except as provided by a written authorization made pursuant to Paragraph 2 of this Agreement. Any written authorization made pursuant to this Agreement remains subject to any applicable procurement policies of City, including approval by the appropriate authority based on the dollar amount of such authorization. This contract will be a one (1)-year contract with the option to renew for up to five (5) additional one (1)-year periods upon the written agreement of both parties.

2. AUTHORIZATION AND ADDITIONAL SERVICES. Work pursuant to this agreement must be authorized in writing using a Task Order substantially similar to the form provided in **Exhibit C**, a standard City construction contract form, or another written authorization appropriate in form for the work to be authorized. All such authorizations will be incorporated by reference into this Agreement and will be subject to the terms and conditions in this Agreement. In the event any provision contained in an authorization conflict with any terms or conditions in this Agreement, the provisions of this Agreement will control, except that any EJCDC General or Supplementary Conditions contained in or incorporated by reference into an authorization will control over any conflicting provision of this Agreement. Contractor may provide services in addition to those listed **Exhibit A** when authorized in writing by City.

3. BILLING. Contractor may bill City monthly for all completed work and reimbursable expenses. Contractor must submit a bill which itemizes the work and reimbursable expenses. City agrees to pay Contractor within thirty (30) days of approval by the Governing Body or other agent of City in accordance with the City's Procurement Policy.

4. PAYMENT. If City becomes credibly informed that any representations of Contractor provided in its billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future due to Contractor until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction.

5. STANDARD OF CARE. Contractor will exercise the same degree of care, skill, and diligence in the performance of the work as is ordinarily possessed and exercised by a professional under similar circumstances. If Contractor fails to meet the foregoing standard, Contractor will perform at its own cost, and without reimbursement, any work necessary to correct errors and omissions which are caused by Contractor's negligence.

6. TERMINATION FOR CONVENIENCE. City may terminate this Agreement for convenience by providing fifteen (15) days' written notice to Contractor. City will compensate Contractor for all work completed and accepted and reimbursable expenses incurred to the date of its receipt of the termination notice. Compensation will not include anticipatory profit or consequential

damages, neither of which will be allowed.

7. TERMINATION FOR LACK OF FUNDS. If, for whatever reason, adequate funding is not made available by City to support or justify continuation of the level of work to be provided by Contractor under this Agreement, City may terminate or reduce the amount of work to be provided by Contractor under this Agreement. In such event, City will notify Contractor in writing at least thirty (30) days in advance of such termination or reduction of work for lack of funds.

8. DISPUTE RESOLUTION. The Parties agree that disputes regarding the work will first be addressed by negotiations between the Parties. If negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for the dispute may take such steps as it deems necessary to protect its interests. Notwithstanding any such dispute, Contractor will proceed with undisputed work as if no dispute existed, and City will continue to pay for Contractor's completed undisputed work. No dispute will be submitted to arbitration without both Parties' written approval.

9. SUBCONTRACTING. The contractor shall notify the city in writing of any major subcontractors that will be utilized on the project for approval, prior to starting the work. Unless stated in the written approval to an assignment, no assignment will release or discharge Contractor from any obligation under this Agreement. Any person or entity providing subcontracted work under this Agreement must comply with **Section 11 (Insurance)**.

10. OWNERSHIP OF DOCUMENTS. All final documents provided to City as part of the work provided under this Agreement, including but not limited to reports, plans, and related documents, will become City's property except that Contractor's copyrighted documents will remain owned by Contractor. Such documents must be clearly marked and identified as copyrighted by Contractor.

11. INSURANCE. Contractor and any subcontractor will maintain for the term of this Agreement insurance as provided in **Exhibit B**.

12. BONDS. For any work authorized pursuant to this agreement for a sum exceeding \$100,000 for the purpose of making any public improvements, or constructing any public building or making repairs on the same, the Contractor will obtain a Statutory Bond, using the form in **Exhibit D**, that satisfies the requirements accompanying the form and K.S.A. 60-1111, as amended. At its discretion, the City may require a Performance and Maintenance Bond, using the form in **Exhibit E**, for any work authorized pursuant to this agreement. Such Performance and Maintenance Bond must satisfy the requirements accompanying the form. Any executed bond is incorporated by reference into this agreement. The rights and remedies provided under any executed bond are in addition to and do not limit any rights afforded to the City by any other clause of this Agreement.

13. WARRANTIES. Supplies or services furnished pursuant to this Agreement shall be covered by the most favorable commercial warranties, expressed or implied, that the Contractor or manufacturer gives to any customer. Contractor warrants and guarantees to the City that all work performed pursuant to this Agreement and a written authorization will be in accordance with this Agreement and the written authorization of such work and will not be defective. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this Agreement.

14. INDEMNIFICATION AND HOLD HARMLESS. For purposes of this Agreement, Contractor agrees to indemnify, defend, and hold harmless City, its officers, appointees, employees, and agents from any and all loss, damage, liability or expense, of any nature whatsoever caused or incurred as a result of the negligence or other actionable fault of Contractor, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. Contractor is not required hereunder to defend City, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence. City does not indemnify Contractor.

15. LIMITATION OF LIABILITY FOR BREACH OF CONTRACT OR NEGLIGENT PERFORMANCE. Any attempt to limit liability for breach of contract or negligent performance to the amount of the payment to Contractor by City is void. Any attempt to limit Contractor's liability to City for consequential, exemplary, or punitive damages, or any other measure of damages permitted by law, in any action against Contractor for breach of contract is void.

16. KANSAS ACT AGAINST DISCRIMINATION. *Unless* Contractor employs fewer than four (4) employees during the term of this Agreement, or *unless* the total of all agreements (including this Agreement) between Contractor and City during a calendar year are cumulatively less than \$5,000, *then* during the performance of this Agreement, Contractor agrees that:

- a. Contractor will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and will not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- b. in all solicitations or advertisements for employees, Contractor will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
- c. if Contractor fails to comply with the way Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Contractor will be deemed to have breached the present contract and it may be canceled, terminated, or suspended, in whole or in part, by City without penalty;
- d. if Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Contractor will be deemed to have breached the present contract and it may be canceled, terminated, or suspended, in whole or in part, by the contracting agency; and
- e. Contractor will include the provisions of subsections a. through d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or Contractor.

17. ENTIRE AGREEMENT. This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to by both Parties.

18. NO THIRD-PARTY BENEFICIARIES. Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

19. INDEPENDENT CONTRACTOR STATUS. Contractor is an independent contractor and not an agent or employee of City.

20. COMPLIANCE WITH LAWS. Contractor will abide by all applicable federal, state, and local laws, ordinances, and regulations.

21. FORCE MAJEURE CLAUSE. Neither Party will be considered in default under this Contract because of any delays in performance of obligations hereunder due to causes beyond the control and without fault or negligence on the part of the delayed Party, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, tornado, epidemic, quarantine restrictions, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the delayed Party must notify the other Party in writing of the cause of delay and its probable extent within ten (10) days from the beginning of such delay. Such notification will not be the basis for a claim for additional compensation. The delayed Party must make all reasonable efforts to remove or eliminate the cause of delay and must, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

22. APPLICABLE LAW, JURISDICTION, VENUE. Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Kansas, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

23. SEVERABILITY. If any provision of this Agreement is determined to be void, invalid, unenforceable, or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Agreement will be unaffected and will continue to be valid and enforceable.

24. ORDER OF PRECEDENCE. If there is any conflict between the terms of this Agreement, excluding exhibits, and anything contained in the exhibits referenced herein or attached hereto, the terms and provisions of this Agreement, excluding exhibits, shall control.

[The remainder of this page is intentionally left blank.]

The Parties hereto have caused this Agreement to be executed this ____ day of
_____, 20____.

CITY OF OLATHE, KANSAS

By: _____
Mayor

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney or Deputy/Assistant City Attorney

Crossland Heavy Contractors

By:  Erick Lowe VP/DM

(INSERT NAME & TITLE)
501 S East Ave
Columbus, KS 66725

Exhibit A
Description of Services and Rates

On-Call Construction Support for Environmental Services
Schedule of Billing Rates and Percentage Markups

Owner: City of Olathe, Kansas
Contractor: Crossland Heavy Contractors, Inc.
Effective Dates: 12/1/2024 to 12/1/2025

Job Classification	Billing Rates (\$/HR)		
Management and Trades	Regular	Overtime	Emergency Response
Project Manager	\$ 106.00	\$ 159.00	\$ 212.00
Project Superintendent	\$ 106.00	\$ 159.00	\$ 212.00
Project Estimator	\$ 90.00	\$ 135.00	\$ 180.00
Assistant Superintendent	\$ 90.00	\$ 135.00	\$ 180.00
Foreman	\$ 80.00	\$ 120.00	\$ 160.00
Carpenter	\$ 60.00	\$ 90.00	\$ 120.00
Pipefitter	\$ 65.00	\$ 97.50	\$ 130.00
Equipment Operator	\$ 60.00	\$ 90.00	\$ 120.00
Crane Operator	\$ 75.00	\$ 112.50	\$ 150.00
Laborer	\$ 55.00	\$ 82.50	\$ 110.00

Contract Markups	
Overhead & Profit - Markup on Cost of Work	11%
Bonds and Insurance	1.5%

Regular Hours Include Normal Business Hours and an 8 Hour Work Day
Overtime Cost is for Overtime Outside of an 8 Hour Work Day or over 40 hours in a week
Emergency Response Rates are for Non Standard Working Hours and Immediate Response
Cost of Work is the project cost including, but not limited to Subcontractors, Materials, Labor, Equipment, Etc... as Required